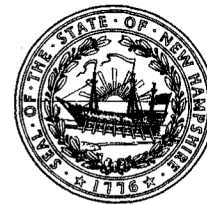




The State of New Hampshire
Department of Environmental Services



Michael P. Nolin
Commissioner

April 26, 2005

Richard Lyons, Jr.
d/b/a Richard Lyons, Jr. Logging & Landclearing
PO Box 12
Bennington, NH 03442

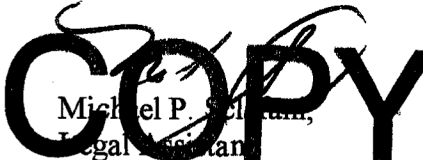
Re: Docket No. AF 05-006 Motion to Accept Settlement Agreement

Dear Mr. Nolan:

Enclosed for your records is a copy of the Motion to Accept Settlement Agreement in the above-captioned matter executed by Harry T. Stewart, P.E., Director of the Water Division, and accepted by Commissioner Michael P. Nolin on April 21, 2005.

On behalf of the Department of Environmental Services, thank you for your cooperation in resolving this matter.

Sincerely,


Michael P. Nolin
Legal Assistant

cc: Harry T. Stewart, P.E., Director, Water Division
Gretchen R. Hamel, Administrator, DES Legal Unit
Kerry D. Barnsley, Compliance Attorney, DES Legal Unit
James Martin, DES Public Information Officer
Mary Ann Tilton, DES WD

Richard Lyons, Jr.
d/b/a Richard Lyons, Jr. Logging & Landclearing
18 Dodge Hill Road
P.O. Box 12
Bennington, NH 03442

**ADMINISTRATIVE FINE
No. AF 05-006**

Re: Dublin-Tax Map 5, Lot 2
Wetlands Bureau File No. 2004-0476

MOTION TO ACCEPT SETTLEMENT AGREEMENT

NOW COME the Department of Environmental Services, Water Division (the "Division") and Richard Lyons, Jr., parties to the above-captioned matter, and stipulate to the following:

1. Pursuant to RSA 482-A, the Department of Environmental Services ("DES") regulates dredging, filling, and construction in or on any bank, flat, marsh, wetland, or swamp in and adjacent to any waters of the state. Pursuant to RSA 482-A:11, I, the Commissioner of DES has adopted Wt 100 *et seq.* to implement this program.
2. Pursuant to RSA 482-A:13 and RSA 482-A:14, III, the Commissioner is authorized to impose fines of up to \$2,000 per violation for violations of the statute, of rules adopted pursuant to the statute, or of any order or permit issued under the statute. Pursuant to RSA 482-A:11, I, the Commissioner has adopted Env-C 614 to establish the schedule of fines for such violations.
3. Richard Lyons, Jr., doing business as Richard Lyons, Jr. Logging & Landclearing ("Richard Lyons, Jr.") is an individual having a mailing address of P.O. Box 12, Bennington, NH 03442.
4. Norman Bemis, Jr. is the owner of land located at Route 101, Dublin, NH, more particularly described on the Dublin Tax Map 5 as Lot 2 ("the Property").
5. Alan Klotzbier was hired by Norman Bemis for forestry work on the Property.
6. Richard Lyons, Jr. was hired by Mr. Klotzbier as the logging contractor for the Property.
7. On January 4, 2005, the Division issued Notice of Proposed Administrative Fine No. AF 05-006 (the "Notice") to Richard Lyons, Jr. seeking fines totaling \$14,000 for violations of RSA 482-A.
8. Specifically, the Notice cited Richard Lyons, Jr. for violating RSA 482-A:3, I by filling 4,600 square foot area of wetlands without a permit from DES. Env-C 614.03(b)(1), the Division sought a fine of \$1,000.
9. Specifically, the Notice cited Richard Lyons, Jr. for violating RSA 482-A:3, I by filling 5,600 square foot of forested wetlands without a permit from DES. Env-C 614.03(b)(1), the Division sought a fine of \$1,000.
10. Specifically, the Notice cited Richard Lyons, Jr. for violating RSA 482-A:3, I by filling approximately 300 linear feet of seasonal stream without a permit from DES. Env-C 614.05(c)(1), the Division sought a fine of \$2,000.

11. Specifically, the Notice cited Richard Lyons, Jr. for violating Admin. Rule Wt 304.05 (b) by failing to comply with the BMPs, specifically by:

- a. Failure to use erosion controls throughout the Property;
- b. Failure to use water-bars, geo-textile fabric, and approach stabilization;
- c. Failure to stabilize four crossings;
- d. Use of poled fords at high flow; and
- e. Placing a log landing directly adjacent to a wetland.

For the violations Env-C 614.06(b), specifies a \$2,000 per violation, the Division sought a fine of \$10,000.

12. In order to settle this matter, the Division and Richard Lyons, Jr. have agreed to the terms of this Settlement Agreement ("Agreement"), as set forth herein.

13. Of the total \$14,000 fine sought, \$7,000 shall be suspended contingent upon compliance by Richard Lyons, Jr.:

- a. With all regulations administered by DES for a period of two years from the date of acceptance of this Agreement by the Commissioner of the Department of Environmental Services.

14. Failure of Richard Lyons, Jr. to comply with the terms of this Agreement shall render the suspended portions of the fine immediately due and payable. If Richard Lyons, Jr. complies with all DES rules and regulations for a period of two years, the suspended portion of the fine shall be waived.

15. Richard Lyons, Jr. agrees to pay the remaining \$7,000 upon his execution of the Agreement.

16. Payment will be made by certified check made payable to: "Treasurer, State of New Hampshire" and will be mailed to:

DES Legal Unit
Attention: Michael Sclafani, Legal Assistant
Office of the Commissioner
P.O. Box 95
Concord, NH 03302-0095

17. If any payment is made by check that is returned due to insufficient funds, pursuant to NH RSA 6:11-a DES may charge a fee in the amount of 5% of the face amount of the check or \$25, whichever is greater, plus all protest and bank fees, in addition to the amount of the check, to cover the costs of collection.

18. By executing this Agreement, Richard Lyons, Jr. waives its right to a hearing on or any appeal of the administrative fines identified in the Notice, and agrees that this Agreement may be entered into and enforced by a court of competent jurisdiction.

19. The effective date of this Agreement will be the date on which it is signed by Richard Lyons, Jr. and the Director of the Water Division and accepted by the Commissioner of DES. After that date, this Agreement may be amended only by written agreement signed by both parties and the Commissioner. Any such amendment will become effective on the date upon which it has been accepted by the Commissioner.


Any such amendment will become effective on the date upon which it has been accepted by the Commissioner.

20. No failure by DES to enforce any provision of this Agreement after any breach or default will be deemed as a waiver of its rights with regard to that breach or default, nor will such failures be construed as a waiver of the right to enforce each and all provisions of this agreement on any further breach or default.


WHEREFORE, the parties respectfully request the Commissioner to accept the terms of this Agreement by granting this Motion.

Respectfully submitted,

4/15/05
Date

COPY

Richard Lyons, Jr.
d/b/a Richard Lyons, Jr. Logging & Landclearing

4/20/05
Date

COPY

Harry T. Stewart, P.E., Director

This Motion to Accept Settlement Agreement is granted this 21st day of APRIL, 2005.

COPY

Michael P. Nolan, Commissioner
Department of Environmental Services